IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

MACON COUNTY INVESTMENTS, INC.; REACH ONE, TEACH ONE OF AMERICA, INC.,	)	
Plaintiffs,	)	
v.	)	**Case Number: 3:06-CV-224-WKW**
SHERIFF DAVID WARREN, in his official capacity as the SHERIFF OF MACON COUNTY, ALABAMA,	)	
Defendant.	)	

FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT

COME NOW the Plaintiffs, Macon County Investments, Inc. and Reach One, Teach One of America, Inc., and hereby file this First Amended Complaint in accordance with this Court's June 26, 2006 Order.

JURISDICTION

1. This action is brought pursuant to the Fourteenth Amendment to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1343(3)-(4) as well as the aforesaid statutory and constitutional provisions.

PARTIES

2. Plaintiff, Macon County Investments, Inc. (hereinafter referred to as "MCI"), is a for-profit organization incorporated under the laws of the State of Alabama and doing business in Macon County as a real estate development company.

3. Plaintiff, Reach One, Teach One of America, Inc. (hereinafter referred to as "Reach

One, Teach One"), is a non-profit, federal tax-exempt organization incorporated under the laws of the State of Alabama and doing business in Macon County as a public service organization.

4. Defendant Sheriff David Warren (hereinafter referred to as the "Defendant Sheriff"), at all pertinent times and currently serves as the Sheriff of Macon County, Alabama. By virtue of his position as Sheriff, he also serves as an agent and executive of the State of Alabama. Ala. Const. (1901) Art. V § 112.

FACTUAL ALLEGATIONS

5. The State of Alabama allows for the Amendments to its Constitution which only affect a certain County. Through this type of Amendment, or local legislation, the Alabama Legislature authorized the operation of Bingo facilities in Alabama.

6. The Legislature for the State of Alabama ratified Amendment 744 to the State's Constitution. This Amendment governs the operation of Bingo gaming in Macon County. The Amendment provides, in pertinent part, that "the operation of bingo games for prizes or money by nonprofit organizations for charitable, educational, or other lawful purposes shall be legal in Macon County." *See* Ala. Const. (1901) Amend. 744. Further, the Amendment provides that the non-profit organization may enter into an agreement with an individual, firm, or a corporation to operate the facility.

> "A nonprofit organization may enter into a contract with any individual, firm, association, or corporation to have the individual or entity operate bingo games or concessions on behalf of the nonprofit organization. A nonprofit organization may pay consulting fees to any individual or entity for any services performed in relation to the operation or conduct of a bingo game."

Ala. Const. (1901) Amend. 744 (4)

The Legislature placed no limit on the number of licenses that can be issued or facilities that can be authorized to operate gaming in Macon County.

7. Amendment 744 also states that the Sheriff of the County shall be responsible for promulgating the rules regarding the licensing and operation of the Bingo facilities. Pursuant to Amendment 744, the Defendant Sheriff promulgated "Rules and Regulations for the Licensing and Operation of Bingo Games in Macon County" in December of 2003. *See* Exh.1, Original Rules.

8. At that time, the Rules stated that any non-profit organization could make an application for a Class B Bingo license and that the location of the facility, including the land, building and improvements, had to be at least $5 million in value. Original Rules, Section 1(j) and Section 4(a).

9. The Defendant Sheriff has issued only one Class B Bingo facility license under these Rules. That facility is currently operating in Macon County.

10. Without further justification and for no announced reasons, six (6) months later, on June 2, 2004, the Defendant Sheriff promulgated the First Amended and Restated Rules and Regulations for the Licensing and Operation of Bingo Games in Macon County, Alabama. Exh. 2, First Amended Rules.

11. The First Amended Rules provide that before a Class B Bingo License can be granted a minimum of fifteen (15) non-profit organizations must submit an application and that the facility and location had to be at least $15 million in value. First Amended Rules, Section 1(j) and Section 2.

12. The Sheriff issued no additional Class B Bingo licenses or authorized any additional facilities under the First Amended Rules.

13. Once again without actual justification, and for no announced reason on January 1, 2005, the Defendant Sheriff issued a Second Amended and Restated Rules and Regulations for the Licensing and Operation of Bingo Games in Macon County, Alabama. The Second Amended Rules stated that at no time shall there be more than sixty (60) Class B Licenses in Macon County, Alabama. Exh. 3, Second Amended Rules, Section 2.

14. Upon information and belief, there are currently fifty-nine (59) Class B licenses issued in Macon County, Alabama only to the original and sole facility. However, there have been no additional Class B Bingo licensed or facilities authorized under the Second Amended Rules.

15. On or about July 25, 2005, Reach One, Teach One and MCI filed a joint application for a Class B Bingo license in Macon County using the Defendant Sheriff's required Application for Bingo License pursuant to the Second and Restated Amended Rules previously referenced herein. Exh. 4, Application. As required by these rules and Amendment 744, Reach One, Teach One served as the non-profit organization application. Additionally, in accordance with these rules, MCI joined the application as "a member or a person who shall be in charge of or have control over the operation or promotion of bingo games" and was designated as the surety and guarantor underwriting the bingo games. Exh. 3, Second Amended Rules, Section 4(c)(4)-(6); Exh. 4, Application.

16. Pursuant to the applicable instructions to the Bingo License Application, the Executive Director of Reach One, Teach One and the President and other members of MCI completed personal data forms and consented to background checks as applicants for a Class B Bingo license. Exh. 4, Application.

17. MCI filed the joint application with the office of the Defendant Sheriff, and the Defendant Sheriff acknowledged the receipt of the same.

18. Although the Defendant Sheriff has made some verbal assurances that the application would be granted, the Defendant Sheriff has not issued a license to the Plaintiffs.

19. Based upon those verbal assurances, the MCI has purchased land for the facility, began construction of the facility and negotiated financing to purchase games for the operation of the facility.

EQUAL PROTECTION CLAIM

20. The Plaintiffs fully incorporate Paragraphs 1-19 by reference as if fully set forth herein.

21. The First Amended Rules and the Second Amended Rules preclude applicants post June 2004 from obtaining a Class B Bingo license and have effectively limited the operation of Class B Bingo facilities to one entity and one location. There is no rational stated or disclosed basis for twice amending the Original Rules under which the Defendant Sheriff issued the first and only licensed facility in Macon County.

22. There is no rational basis for increasing the minimum number of applicants to establish a Class B Bingo facility from one non-profit organization to fifteen (15) non-profit organizations.

23. There is no rational basis for limiting the amount of Class B licenses in Macon County to a maximum of sixty (60). Nor is there any rational basis to delay consideration or issuing a license.

24. The Defendant Sheriff's failure to issue a license to the Plaintiffs can only be taken as his decision to deny to the application and to treat Reach One, Teach One and MCI differently from the applicant who was granted a Class B Bingo License in Macon County under the Original Rules.

25. This decision to treat the Plaintiffs Reach One, Teach One and MCI differently from prior applicant(s) is not based upon any reasonable standards, but is instead, arbitrary and capricious.

26. As a result, the Defendant Sheriff, under the color of State law and his authority as

Sheriff of Macon County, has denied Plaintiffs Reach One, Teach One and MCI equal protection under the law in violation of the Fourteenth Amendment of the Constitution of the United States of America. Specifically, the Plaintiffs are being denied the right to operate a Class B Bingo facility in Macon County as allowed by Amendment 744 to the Constitution of the State of Alabama.

WHEREFORE, the Plaintiffs demand the following relief:

A. Preliminary and permanent injunctive relief prohibiting the Defendant Sheriff and his respective officials, agents, employees, and representatives from further operating under the First or Second Amended Rules.

B. Preliminary and permanent injunctive relief compelling the Defendant Sheriff and his respective officials, agents, employees, and representatives to grant the application of Reach One, Teach One and MCI's application for a Class B Bingo License in Macon County.

C. A declaratory judgment that the Defendant Sheriff's differential treatment towards the Plaintiffs is a denial of equal protection and that his actions twice amending the Original Rules and delaying the application of the Plaintiffs was and remains arbitrary and capricious.

D. A declaratory judgment from this Court that the First and Second Amended Rules are arbitrary and capricious and thereby null and void.

D. Awarding Plaintiffs their reasonable costs and expenses herein, including reasonable attorneys fees;

E. Any and all further relief that the Court deems necessary and proper to effect justice in this cause.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all counsel of record via this Court's electronic filing system on this the 28th day of June, 2006.

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